

Docket No. 740756-2653
Application No. 0/688,969
Page 6

REMARKS

The Examiner's Office Action of November 2, 2004 has been received and its contents reviewed. Applicant would like to thank the Examiner for reviewing and considering this application.

Claims 3-4 and 9-27 are pending for consideration, and claims 1-2 and 5-8 have been cancelled previously. By this Amendment, claims 3 and 4 have been amended.

Turning now to the detailed Office Action, claims 3, 4, 10 and 12 stand rejected under 35 U.S.C. §102(e) as anticipated by Yoshida et al. (U.S. Patent No. 6,528,851 – hereafter Yoshida). In response, Applicant has amended claims 3 and 4, as shown above, to further recite an interlayer insulating film over the hard mask, wherein the interlayer insulating film is in contact with at least a part of a lateral face of the gate electrode. Consequently, since at least the amended features of the present claims are not taught (and is not inherent) in the teachings of Yoshida, as is required by MPEP Chapter 2131 in order to establish anticipation, the rejection of claims 3, 4, 10 and 12 under 35 U.S.C. §102(e) as anticipated by Yoshida is improper.

Claims 9, 11 and 13 stand rejected under 35 U.S.C. §103(a) as unpatentable over Yoshida. Further, claims 14-27 stand rejected under 35 U.S.C. §103(a) as unpatentable over Yoshida in view of Fujimoto et al. (U.S. Patent Publication No. 2002/0102783 – hereafter Fujimoto). Applicant respectfully traverses the §103(a) rejections at least for the reasons provided below.

With respect to the rejection of claims 9, 11 and 13, Applicant respectfully submits that the amendments of claims 3 and 4 and the arguments in relation to the §102(e) rejection are also applicable to their dependent claims 9, 11 and 13.

With respect to the rejection of claims 14, 15, 21 and 22, the Examiner appears to assert that the resist mask 16a of Fig. 2B of Fujimoto corresponds to “the island shaped hard mask” of Applicant's claims 14, 15, 21 and 22. Additionally, the Examiner alleges that Fujimoto discloses the features wherein “side walls of the island shaped hard mask have an angle of inclination of 0° or more and of 90° or less” as recited in claims 14 and 21.

In response to the rejection of claims 14, 15, 21 and 22, Applicant respectfully directs the Examiner's attention to lines 8-12 on page 4 of the present specification where the difference between a hard mask and a resist mask is discussed. In Fujimoto, it appears that

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Docket No. 740756-2653
Application No. 10/688,969
Page 7

only a resist mask or photomask is taught but not a hard mask as recited in Applicant's pending claims.

Moreover, Applicant respectfully notes that neither Fujimoto nor Yoshida teaches, discloses or suggests the feature wherein the "side walls of the island shaped hard mark have an angle of inclination of 0° or more and of 90° or less" as recited in claims 14 and 21. If the Examiner still insists that the cited references teach, disclose or suggest this claimed feature, Applicant will request the Examiner to point out specifically where this feature can be found in the cited references.

Applicant further respectfully asserts that the feature wherein the "side walls of the island shaped hard mark forms arc shapes" is also not taught, disclosed or suggested by Yoshida and Fujimoto. Applicant would respectfully request the Examiner to provide specific text in the cited prior art references disclosing or suggesting this claimed feature.

The requirements for establishing a *prima facie* case of obviousness, as detailed in MPEP § 2143 - 2143.03 (pages 2100-122 - 2100-136), are: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference(s) to combine the teachings; second, there must be a reasonable expectation of success; and, finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. As Fujimoto and Yoshida both fail to teach, disclose or suggest "side walls of the island shaped hard mark have an angle of inclination of 0° or more and of 90° or less", and "side walls of the island shaped hard mark forms arc shapes" their application in the §103(a) rejections, whether separately or combined, is improper, and a *prima facie* case of obviousness has not been established.

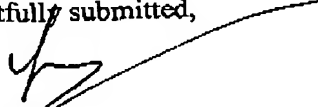
In view of the foregoing, it is respectfully requested that the rejections of record be reconsidered and withdrawn by the Examiner, that claims 3-4 and 9-27 be allowed and that

W633697.1

Docket No. 740756-2653
Application No. 10/688,969
Page 8

the application be passed to issue. If a conference would expedite prosecution of the instant application, the Examiner is hereby invited to telephone the undersigned to arrange such a conference.

Respectfully submitted,



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